

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 132 of 2006

Reserved on: 19.9.2026

Date of Decision: 01.10.2026

Lal Singh (deceased) through LRs & ors. ...Appellants

Versus

Mulakh Raj (deceased) through LRs & ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the Appellants : Ms Radhika Gautam, Advocate
(through video-conferencing)
and Mr Jai Ram Sharma,
Advocate (present in person in
the Court).

For Respondents No.1(a) : Mr Mohinder Verma, Advocate.
to 1(e).

Respondents No.2(a) to 2(f) and 3 to 6 proceeded ex parte.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 15.12.2005, passed by learned Additional District Judge, Fast Track Court, Kangra at Dharamshala (learned

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

First Appellate Court), vide which the judgment and decree dated 3.5.2001, passed by learned Sub-Judge-II, Nurpur, District Kangra (learned Trial Court), were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court for seeking possession of the suit land mentioned in the head note and para-1 of the plaint. It was asserted that the suit land is owned and possessed by the plaintiffs and was entered in their ownership and possession before the settlement. The defendant encroached upon part of the suit land in the last week of July 1985 and constructed a structure/abadi on the suit land. The plaintiffs asked him to remove the encroachment. The defendant assured that he would vacate the suit land if any encroachment was detected during the settlement; however, he failed to adhere to his promise and got his name recorded in the revenue record as kabij. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objections regarding lack of maintainability and cause of action, the plaintiffs being estopped by their act and conduct from filing the suit, the suit being bad for non-joinder of necessary parties, and the plaintiffs having acquiesced by their act and conduct to the acts of the defendant. The contents of the plaint were denied on merits. It was asserted that the defendant came to India after partition in 1947. He was poor and had no money to purchase the land. He resided with Sarnu for some time. Sarnu made an oral gift/donation of the suit land to the defendant somewhere in the year 1949. The defendant started cultivating the suit land and raised construction upon part of it. Rooms were added to the original construction from time to time. Purshotam and Kuldeep Chand, sons of the defendant, also raised construction on the suit land. The construction was also electrified. No protest was raised by any person. The defendant also raised an orchard of different fruit-bearing trees. The possession of the defendant is open, continuous, and peaceful, to the knowledge of the plaintiffs and their predecessors, and he has become the owner by way of adverse possession. The suit has

been filed without any basis; hence, it was prayed that the suit be dismissed.

4. No replication was filed.

5. The learned Trial Court framed the following issues on 22.12.1998: -

- (1) Whether the plaintiffs are owners of the suit land? OPP.
- (2) If Issue No.1 is proved, whether the plaintiffs are entitled for possession of the suit land? OPP.
- (3) Whether the suit is not maintainable? OPD.
- (4) Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD.
- (5) Whether the plaintiffs have no cause of action to file the present suit? OPD.
- (6) Whether the suit is bad for non-joinder of necessary parties? OPD.
- (7) Whether the plaintiffs have acquired on account of the defendant, as alleged? OPD.
- (8) Whether the defendant has become owner of the suit land by way of adverse possession, as alleged? OPD.
- (9) Relief.

6. The parties were called upon to produce their evidence. The plaintiffs examined plaintiff No. 1 Lal Singh (PW-1) and Jagdish Raj (PW-2). The defendant examined himself (DW-1), Khazan Singh (DW-2), Prakash Chand (DW-3), Hukmi Ram (DW-4), and Raj Kumar (DW-5).

7. The learned Trial Court held that the defendant had installed an electricity meter in his residential house in the year 1975. The plaintiffs' witness also admitted that he had seen the defendant in possession for more than 22 years. The house tax was being paid by the defendant from the year 1973–74. All these circumstances made the plaintiffs' version regarding their being in possession before the settlement and the defendant taking possession in 1985 highly doubtful. The plaintiffs had permitted the defendant and his sons to raise construction by spending huge amounts of money and had not protested; therefore, they were estopped from claiming possession of the constructed portion. The plea taken by the defendant that he had become owner by way of adverse possession was not proved. Hence, the learned Trial Court answered Issue Nos. 1, 4, and 7 in affirmative, Issue No. 2 partly in affirmative, Issue Nos. 3, 5, 6, and 8 in negative, and partly decreed the suit. The plaintiffs were held entitled to the vacant portion of the suit land, but not entitled to the portion under the construction of the defendant. The defendant was directed to deposit the average market value of the portion over which he had raised construction.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendant filed an appeal, which was decided by the learned Additional District Judge, Fast Track Court, Kangra at Dharamshala (learned First Appellate Court). The learned Appellate Court held that the defendant had got his house electrified, and he was paying the house tax to the Gram Panchayat. The defendant had not examined the legal heirs of Sarnu or produced any document to establish the gift deed. The defendant had openly asserted himself to be the owner and had acted in his capacity as the owner. No objection was raised by the plaintiffs to the acts of the defendant. The plea taken by the defendant that he had become the owner of the suit land by adverse possession was duly proved. Learned Trial Court erred in delivering possession to the plaintiffs. Hence, the appeal filed by the defendant was allowed, and the judgment and decree passed by the learned Trial Court were set aside.

9. Being aggrieved by the judgment and decree passed by the learned First Appellate Court, the plaintiffs have filed the present appeal, which was admitted on 27.3.2006 on the following substantial question of law:

- (i) Whether the First Appellate Court erred in holding the respondent to be in adverse possession of the suit land when the entire case of the respondent was that he was in possession of the suit land under a gift from one Sarnu?

10. I have heard Ms Radhika Gautam, learned counsel appearing through video conferencing, and Mr Jai Ram Sharma, learned counsel appearing in the Court for the appellant/plaintiffs, and Mr Mohinder Verma, learned counsel for respondents No. 1(a) to 1(e).

11. Ms Radhika Gautam, learned counsel for the appellants/plaintiffs, submitted that the necessary ingredients of adverse possession were not satisfied. The defendant never acknowledged the title of the plaintiffs, which is a necessary condition to claim adverse possession. The possession, however long, cannot amount to adverse possession, and the learned Appellate Court conflated long possession and adverse possession. Therefore, she prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside. She relied upon the judgment of this Court in *Pritu alias Pritam Singh v. Balwant Singh*, 2023:HHC:20655, in support of her submissions.

12. Mr Mohinder Verma, learned counsel for respondents No. 1(a) to 1(e), submitted that the suit was barred by limitation. It has been held by both the learned Courts below that the plea taken by the plaintiffs that the defendant had encroached upon the suit land during the settlement in the year 1985 was not proved on record. The possession was taken before 1985, and the suit was filed on 24.4.1996; hence, it was hopelessly barred by limitation. He prayed that the present appeal be dismissed. He relied upon the judgments in *Ramiah Vs. N. Narayana Reddy (dead) by LRs 2024 o Supreme (SC) 835* and *R. Nagaraj (dead) through LRs and anr. Vs. Rajmani & ors. 2025 INSC 478* in support of his submissions.

13. I have given considerable thought to the submissions made at the bar and have gone through the record carefully.

Substantial Question of Law:

14. The defendant Mulakh Raj (DW-1) stated that he resided with Sarnu for one and a half years. Sarnu did not have any sons. Sarnu gifted the suit land to the defendant for constructing a house. The defendant constructed a house and planted fruit-bearing trees over the suit land. The house was

electrified in the year 1975. Two other houses were constructed by his sons, Purshotam Lal and Kuldeep. Sarnu, or the plaintiffs, never objected to the construction of the house. The defendant had become the owner by way of adverse possession.

15. The plaintiff Lal Singh admitted in his cross-examination that the defendant does not have any other house except the house located on the suit land, the village was electrified in the year 1975, and the defendant had obtained the electricity connection. Thus, the defendant's version that the house was electrified in the year 1975 is duly proved by the admission of the plaintiffs.

16. Hukmi Ram, Clerk (DW-4), proved the application filed by the defendant for electricity connection on 4.12.1973. The meter was installed on 18.9.1975. His statement corroborates the defendant's statement and the admission made by the plaintiff that the defendant's house was electrified in the year 1975.

17. The plaintiff, Lal Singh, admitted in his cross-examination that the defendant was paying chulla tax to the Gram Panchayat. Raj Kumar (DW-5) stated that as per the house tax register for the year 1973-74, the name of the defendant was

recorded at serial number 141. The defendant used to pay the house tax. He proved the receipts on record. His statement, coupled with the admission made by the plaintiff in the cross-examination that the defendant was paying chulla tax to the Gram Panchayat, shows that the defendant has been in possession since the year 1973–74.

18. Jagdish Chand (PW-2) stated that the suit land was earlier in possession of the plaintiffs and now it is in possession of the defendant. The plaintiffs claimed that the defendant had forcibly encroached upon the suit land, but he could not say anything about it. He had seen the defendant to be in possession for 22 years when he had attained the age of discretion. He made the statement in the year 2000, which means that according to him, the defendant has been in possession since the year 1978. His statement is also as per the record wherein the defendant has been shown to be paying house tax since 1973, applying for electrification of the house in the year 1973, and getting the electricity connection in the year 1975.

19. The statement of Jagdish Chand is binding upon the plaintiffs because he was put forward as a witness of truth by the

plaintiffs. The testimony of Jagdish Chand and the record falsify the plea taken by the plaintiffs in para-2 of the plaint that they remained in possession till *Rabi* 1985 and the defendant had taken possession in the year 1985.

20. The plea taken by the defendant that he was put in possession by Sarnu and he had immediately constructed a house thereafter is not supported by any material on record. Learned Courts below had rightly held that the defendant had not examined any legal heir of Sarnu to prove that Sarnu had gifted the land to the defendant. Khazan Singh (DW-2) stated that he had been seeing the defendant to be in possession since 1969. His testimony does not establish that the defendant has been in possession since the year 1949.

21. Prakash Chand (DW-3) stated that he knew the parties, Mulkh Raj and Sarnu. He had performed the ceremonies of the gift in the year 1957–58, and the land was gifted to the defendant Mulkh Raj. The testimony of this witness is contrary to the defendant's version asserted in para-3 of the written statement that the oral gift/donation was made in the year 1949. Hence, no reliance can be placed upon his testimony.

22. The revenue record also does not support the defendant's version. The copy of Jamabandi for the year 1942–43 (Ex. D-1) shows Sarnu to be the co-owner in possession of Khasra No. 695. He is recorded to be the owner of Khasra Nos. 697 and 698, but Gulab Deen is shown to be in possession of these Khasra numbers. The copy of Misal Haquiat 1970–71 (Ex. D-2) shows that Khasra Nos. 695, 696, 697, and 698 were converted into Khasra No. 585, and the plaintiffs are recorded to be the owners in possession of the suit land. Sarnu was not in possession of Khasra Nos. 697 and 698 as per the copy of Misal Haquiat for the year 1942–43 and could not have gifted it to the defendant. Further, the name of the defendant was not recorded in any of the Jamabandis before 1985–86, and the revenue record does not support the defendant's claim that he remained in possession of the suit land. The entries in the copy of Jamabandi carry with them a presumption of correctness, and the burden is upon the defendant to rebut the presumption. The oral evidence of the defendant does not prove that he has remained in possession of the suit land since 1949.

23. The copy of *Misal Haquiat Bandobast Jadeed* (Ex. P-1) mentions that the name of the defendant was recorded as per the

order passed by the learned AC 2nd Grade in File No. 12 of 1986, decided on 6.1.1986. Therefore, the entry of the name of the defendant as in possession was pursuant to the order passed by the learned AC 2nd Grade. The defendant has not produced a copy of the application filed before the learned AC 2nd Grade to establish that he had asserted a claim to the suit land as a donee since 1949. This was significant because this was the first time that he had asserted his claim on the suit land, and it is essential to know what exactly was said by the defendant before the revenue authorities.

24. The learned Appellate Court held that the possession of the defendant is long and it could be inferred that he was in possession since 1949. The plaintiffs had not objected to the possession, and the defendant's claim that he was in adverse possession has to be accepted as correct. It was rightly submitted on behalf of the plaintiffs that the learned Appellate Court had conflated long possession and adverse possession. It was laid down by this Court in *Tilak Raj vs. Bhagat Ram & another, 1997 (1) Sim.LC 281* that adverse possession means a possession expressly or impliedly in denial of the title of the true owner, and long possession does not mean adverse possession. It was observed: -

“11. It is well settled that adverse possession means a hostile assertion, that is, a possession which is expressly or impliedly in denial of the title of the true owner.

12. It is also well settled that a person who bases his title on adverse possession must plead and prove by clear and unequivocal evidence that the possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts of the defendant constitute adverse possession, regard has to be had to the animus of such defendant which has to be ascertained from the facts and circumstances of each case.

13. It is equally well settled that mere possession for howsoever long a period is not enough to claim title inasmuch as the possession has to be adverse.”

25. Similarly, it was held in *Shishi Ram v. Megh Chand*, 2012 SCC OnLine HP 5133= AIR 2013 HP 65, that long possession is not adverse possession and adverse possession means hostile possession expressly or impliedly in denial of the title of the true owner. It was observed:

“12. It is settled law that mere possession, however long, does not necessarily mean that it is adverse to the true owner. Adverse possession really means hostile possession which is expressly or impliedly in denial of the title of the true owner, and in order to constitute adverse possession, the possession/ roved must be adequate in continuity, publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possession actually informing the real owner of the former's hostile action.”

26. This position was reiterated in *Mast Ram v. Tejinder Singh*, 2018 SCC OnLine HP 2573 = 2018 (2) Latest HLJ 1364 (H.P) and it was held that mere long possession is not an adverse possession. It was observed: -

25. It would be noticed that no exact date of possession has been set out in the pleadings. As per settled law, mere possession is not enough to prove the plea of adverse possession, and it does not result in the conversion of peaceful possession into adverse possession.

26. This issue has been considered in detail by the learned Division Bench of this Court in *CWP No. 306 of 2016, titled Satpal v. State of H.P., decided on 08.08.2016*, wherein it was observed as under: -

"22. Moreover, the plea of adverse possession as raised by the petitioner is absolutely vague as the petitioner has not cared to mention the date from which his possession in fact became adverse. This question assumes importance as the petitioner initially had set up a lawful title in himself.

23. In *Kamla and others v. Baldev Singh and others* 2008(1) Shim. LC 215, this court has held as under:

".....Moreover, in case the defendant or his father were in possession of the suit land as owner and the possession was never taken by the plaintiffs in pursuance of the decree, they can be said to be in possession as owner, but they cannot be treated to be in adverse possession of the suit land in any manner. The learned trial Court has not given its findings that the defendant or his father continued to be the owner of the suit land even after passing of the decree since the decree was never executed, but has given the findings in the alternative that the defendant has become

owner by way of adverse possession. This plea was taken by the defendant in the alternative, but he never pleaded as to from which date his permissive possession as owner became adverse to the true owners, i.e., the plaintiffs and what overt act was done by him to show his hostile title to the suit land. There were no allegations as to when the possession became adverse, in which year or month or in what manner and the simple general allegation made by the defendant in the alternative were accepted by the trial Court without looking into the question that the original possession of the defendant over the suit land or that of his father was permissive being an owner and it never became adverse as against the true owner and if it became adverse in what manner and from which date, month or year. The permissive possession as the owner does not itself become adverse as against the true owner until and unless some overt act is done by the defendant to show his hostile title towards the true owner, which pleadings were very much lacking in the written statement and as such, the defendant was never proved to be in adverse possession of the suit land as owner. Those findings were rightly reversed by the learned First Appellate Court, and the learned First Appellate Court had rightly observed that there was a complete lack of animus on the part of the defendant to hold the suit land adversely to the plaintiffs. It was also observed that it has also not been shown as to what time possession of the defendant became hostile to that of the plaintiffs, which had ripened into ownership. To my mind, there was nothing for the trial Court to conclude that the defendant has become owner by way of adverse possession in the

absence of specific pleadings or proof and, therefore, the learned first appellate Court had come to the right conclusion in reversing the findings under Issue No. 1 in regard to the plea of adverse possession. Once the defendant had failed to prove adverse possession over the suit land, the only conclusion that can be drawn is that the plaintiffs were entitled to the relief of possession and it was rightly given by the first appellate Court."

24. This court in *Brij Mohan Sood v. Parshotam Singh and others*, 2014(1) Him. L.R. 556, has held as follows:-

"11. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", i.e. peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Therefore, a person who claims adverse possession has to show (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party ; (d) how long his possession is continued; and (e) his possession was open and undisturbed. It has to be remembered that the person pleading adverse possession has no equity in his favour since he is trying to defeat the right of the true owner; therefore, it is for him to clearly plead and establish all facts necessary

to establish his adverse possession (Refer *Dr Mahesh Chand Sharma v. Raj Kumari Sharma (Smt.) and others* (1996) 8 SCC 128).

12. Having observed so, it is clear from the pleadings of the defendant that he has failed to plead the essential ingredients of adverse possession. In the absence of the essential ingredients of adverse possession, no amount of evidence can be looked into by this Court. Even otherwise, the defendant has set up a title in himself and has not acknowledged or attorned the plaintiffs to be the owners. Apart from preliminary objection No.1 (supra), in paragraph 3 of the preliminary objection, the defendant has made the following averments:

"The plaintiffs are not the owners of the land; rather the defendants are its owners and the plaintiffs have got no locus standi to file the suit." Throughout the written statement, the defendants have claimed themselves to be the owners of the suit property, and thus the plea of adverse possession is not available to them. "

25. This Court further, in *Deepak Parkash v. Sunil Kumar* 2014 (1) Him. L.R. 654 has emphasised the requirement of the law of pleading the exact date from which the possession became adverse, in the following terms:

"14. It appears that the learned lower Appellate Court completely ignored the pleadings of the parties or else the judgment and decree passed by the learned trial Court on the basis of such pleadings would not have been disturbed much less reversed. A perusal of the written statement would show that pleadings with regard to adverse possession

were not only deficient but, in fact, did not meet the requirement of law. The defendant even failed to specify the definite date on which his possession became adverse.

16. Faced with such a situation, learned counsel for the respondent/defendant would contend that he had led sufficient evidence to prove his plea of adverse possession. I am afraid that I cannot agree with the submissions made by learned counsel for the respondent/defendant.

17. It is a settled law that no amount of evidence beyond pleadings can be looked into. It is further the well-settled principle of law that the evidence adduced beyond the pleadings would not be admissible nor can any evidence be permitted to be adduced which is at variance with the pleadings. The Court at the later stage of the trial, as also the Appellate Court, having regard to the rule of pleading, would be entitled to reject the evidence wherefore there does not exist any pleading."

26. In *Om Parkash&ors. v. Gian Chand &Ors.* 2014(2) *Him. L.R. 1071*, one of us (Tarlok Singh Chauhan, J) dealt in detail with the question of adverse possession, particularly when the defendant therein had not spelt out any specific date from which his possession became adverse, and it was observed as follows:-

"11. Therefore, the moot question is as to whether the pleadings set out by the defendants can meet the requirements of the law or not. This question assumes importance because admittedly, the defendants have not spelt out any specific date from which their possession became adverse."

27. What is adverse possession has been dealt with in detail in Para 10 of *Satpal's case supra*, which reads thus:

"10. Now, adverting to the question of adverse possession, it is a well-recognised proposition in law that mere possession, however long, does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of the title of the true owner and, in order to constitute adverse possession, the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. It is equally settled that a person pleading adverse possession has no equities in his favour, and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish the necessary facts to establish his adverse possession. In the eyes of the law, an owner would be deemed to be in possession of the property so long as there is no intrusion. Even non-use of the property by the owner for a long time won't affect his title."

27. A similar view was taken by this Court in *Pritu alias Pritam Singh v. Balwant Singh*, 2023:HHC:20655, wherein it was observed:-

33. Animus possidendi, as is well known, is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of

possession, knowledge of the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take an unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

XXXX

34. Therefore, in order to acquire title by way of adverse possession, a party is required to plead, prove and place on record showing particulars, date, month and year when the adverse possession commenced and remained peaceful, and is continuous to the knowledge of the true owner. In the instant case, the pleadings and proof qua that aspect is totally missing and perusal of the written statement as filed by defendants No. 1 to 4 only states that defendants No. 1 to 4 being vendees of the land are in possession of 5 Bighas 1 Biswa of the land for the last 53 years. The possession of the defendants No. 1 to 4 of the land is open, peaceful and uninterrupted for the last about 53 years and the said hostile possession of defendants No. 1 to 4 has ripened into ownership by way of adverse possession. Neither is there any averment about the date or month or the year, and all the ingredients as laid down by the Hon'ble Supreme Court in the aforesaid judgments are lacking in the pleadings.

28. This position was reiterated in ***Bhag Singh v. Basant***

Kaur, 2026 SCC OnLine SC 1822 wherein it was observed:

30. It is equally significant that neither the pleadings nor the evidence disclose the point in time at which the appellants' possession allegedly became hostile to the true owners. There is no pleading identifying the date from which the title of the recorded proprietors was openly

repudiated, nor is there evidence demonstrating any overt act by which such hostility was asserted to the knowledge of the true owners. The absence of these foundational pleadings is not a mere technical defect. They constitute the very basis upon which a plea of adverse possession rests. Unless the commencement of hostile possession is pleaded and proved, the statutory period prescribed under the Limitation Act, 1963 cannot even begin to run.

31. The Trial Court and the First Appellate Court appear to have equated long and uninterrupted possession with adverse possession. Such an approach, with respect, overlooks the settled distinction between the two concepts. Long possession may furnish evidence of physical occupation; however it does not, by itself, establish that such possession was adverse in law. The doctrine of adverse possession does not reward longevity of occupation alone. It protects only such possession as is accompanied by a conscious and hostile assertion of ownership in denial of the rights of the true owner. Unless the element of hostility is affirmatively established, the plea must necessarily fail. [See: *Government of Kerala v. Joseph (2023) 17 SCC 400 at Para 35, 47 to 54*]

29. In the present case, there is no evidence that the defendant had ever asserted his title in denial of the real owner. He has not produced the copy of the application filed by him before the revenue authorities to establish that he had claimed his possession to be in denial of the real owners. Thus, the learned Appellate Court had no material to conclude that the defendant's possession was adverse to the real owner, and the learned Appellate Court erred in holding that the defendant had become the owner by way of adverse possession.

30. It was submitted that the suit was not within limitation and the learned Trial Court erred in decreeing it. This submission cannot be accepted. It was laid down by this Court in *Tilak Raj vs. Bhagat Ram & Another, 1997 (1) Sim. LC 281* that a suit based on the title where a plea of adverse possession had not been raised could not be barred by limitation on the ground that it was filed after more than 12 years from the date of dispossession. It was observed:-

“10. The present suit is for possession on the basis of title. Article 63, Limitation Act, 1963, governs the present case. It provides that for possession of immovable property or any interest therein based on the title, the limitation of twelve years begins to run from the date the defendant's interest becomes adverse to the plaintiff.

11. It is well settled that adverse possession means a hostile assertion, that is, a possession which is expressly or impliedly in denial of the title of the true owner.

12. It is also well settled that a person who bases his title on adverse possession must plead and prove by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts of the defendant constitute adverse possession, regard has to be had to the animus of such defendant which has to be ascertained from the facts and circumstances of each case.

13. It is equally well settled that mere possession for howsoever long a period is not enough to claim title, in as much as the possession has to be adverse.

14. In *Liaq Mohammad v D. D. A. and others*, AIR 1994 NOC (Delhi) 35, it has been held that a suit for possession based on the title, where a plea of adverse possession has been raised, would not be barred by limitation on the ground that it has been filed after the expiry of twelve years from the date of dispossession.

15. Equally, it can be said that once the defendant has failed to establish his adverse possession for the statutory period, a suit for possession based on title cannot be dismissed as being time-barred on the ground that the same was filed after the expiry of twelve years from the date of dispossession.”

31. Similarly, it was held in *Indira v. Arumugam*, (1998) 1 SCC 614 that a suit based on the title cannot be defeated on the ground of limitation unless the plea of adverse possession is established. It was observed: -

“4. The aforesaid reasoning of the learned Judge, with respect, cannot be sustained as it proceeds on the assumption as if old Article 142 of the earlier Limitation Act was in force wherein the plaintiff who based his case on the title had to prove not only the title but also possession within 12 years of the date of the suit. The said provision of law has undergone a metamorphic sea change as we find under the Limitation Act, 1963, Article 65, which reads as under:

Description of the suit:- For possession of immovable property or any interest therein	Period of limitation:- Twelve years	Time from which period begins to run:- When the possession of
--	-------------------------------------	---

based on the title		the defendant becomes adverse to the plaintiff.
--------------------	--	---

5. It is, therefore, obvious that when the suit is based on the title for possession, once the title is established on the basis of relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. Unfortunately, this aspect of the matter was missed by the learned Judge and, therefore, the entire reasoning for disposing of the Second Appeal has been vitiated. Only on that short ground and without expressing any opinion on the merits of the question of law framed by the learned Judge for disposing of the Second Appeal, this appeal is allowed.”

32. Similar is the judgment of this Court in *Shishi Ram v. Megh Chand*, 2012 SCC OnLine HP 5133 = AIR 2013 HP 65, wherein it was held: –

“12. It is settled law that mere possession, however long, does not necessarily mean that it is adverse to the true owner. Adverse possession really means hostile possession which is expressly or impliedly in denial of the title of the true owner, and in order to constitute adverse possession, the possession/ roved must be adequate in continuity, publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary

that there should be evidence of the adverse possession actually informing the real owner of the former's hostile action.

.....

14. The learned first Appellate Court thus rightly concluded that when the plaintiff had filed a suit for possession based upon the title and the defendant had taken a plea of adverse possession to defend his title, in that eventuality of the defendant, 's failure to prove his adverse possession, the suit filed by the plaintiff could not have been dismissed on the ground that the defendant failed to prove the possession within a period of 12 years prior to the filing of the suit as held by the Apex Court in *Indira v. Arumugam* AIR 1999 SC 1549.”

33. It was held in *Mallavva v. Kalsammanavara Kalamma*, 2024 SCC OnLine SC 3846 that earlier the plaintiff was required to prove his possession within twelve years under Article 142 of the Limitation Act 1908, but now the suit becomes barred by limitation if the defendant proves adverse possession and the suit is not filed within twelve years. It was observed:

“17. Article 65 of the Limitation Act reads as follows:

“Description of suit	Period Limitation	of Time from which period begins to run
For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff”

From a plain reading of the said Article, it is made clear that a suit filed for recovery of possession based on title should be filed within a period of 12 years when possession of the defendant becomes adverse to the plaintiff concerned.

18. Article 65 of the Limitation Act, 1963 corresponds to Article 142 of the Limitation Act, 1908, wherein it is stated that the plaintiff who based his case on title has to prove not only title, but also possession within 12 years of the date of suit. The said Article has undergone a metamorphic change in view of Article 65 of the Limitation Act, 1963. The vital distinction between Article 142 of the Limitation Act, 1908 and Article 65 of the Limitation Act, 1963 is that as per Article 142 of the 1908 Act, the plaintiff has to prove not only title, but also possession within 12 years of the date of suit, whereas, as per Article 65 of the 1963 Act, a suit for possession based on title has to be filed within 12 years when possession becomes adverse to the concerned plaintiff.

34. In the present case, the defendant failed to prove adverse possession, and a suit based on title cannot be said to be barred by limitation.

35. In *Ramiah* (supra), it was held that a suit for possession based on dispossession falls under Article 64 of the Limitation Act, whereas a suit for possession based on title falls under Article 65 of the Limitation Act. In the present case, the suit was not filed based on dispossession but was filed on title; therefore, the cited judgment does not apply to the present case.

36. It was held in *R. Nagaraj (supra)* that the question of limitation can be raised even though no such plea was taken before the Trial Court. There can be no dispute with this proposition of law; however, the question of limitation does not arise in the present case, as noted above, and no advantage can be derived from the cited judgment.

37. Therefore, the learned Appellate Court erred in holding that the defendant was in adverse possession, and this substantial question of law is answered accordingly.

Final order:

38. In view of the above, the present appeal is allowed, and the judgment and decree passed by the learned Appellate Court are ordered to be set aside, while those passed by the learned Trial Court are ordered to be restored.

39. Pending application(s), if any, also stand(s) disposed of.

40. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

1st October, 2026
(Chander)